

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ANNA M. RAFTERY

DECISION

for Redetermination of a Deficiency or for
Refund of New York State Personal Income Tax
under Article 22 of the Tax Law and New York
City Personal Income Tax under Chapter 46,
Title T of the Administrative Code of the City :
of New York for the Years 1978 and 1979.

Petitioner, Anna M. Raftery, 139 30 Pershing Crescent, Briarwood, New York 11435, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax under Chapter 46, Title T of the Administrative Code of the City of New York for the years 1978 and 1979 (File Nos. 37568 and 44089).

On October 23, 1985, petitioner waived a hearing before the State Tax Commission and submitted the matter for decision based upon the Audit Division file, as well as a brief and additional documents to be submitted by October 8, 1986. After due consideration of the record, the State Tax Commission hereby renders the following decision.

ISSUES

I. Whether the notices of deficiency were issued without any basis and for the sole purpose of extending the period of limitation on assessment.

II. Whether petitioner has substantiated that she was engaged in a trade or business during the years at issue.

III. Whether petitioner has substantiated the character and amount of business expenses claimed as deductions from gross income for the years at issue.

FINDINGS OF FACT

1. Anna M Raftery (hereinafter "petitioner") filed a New York State Income Tax Resident Return (with City of New York personal income tax) for each of the years 1978 and 1979. On each return, petitioner reported her occupation as "Court Reporting SVC".

2. For 1978, petitioner reported business income of \$16,228.00. A Federal Schedule C attached to the return reported the following income and deductions:

"Schedule C - Income From Business or Profession: Court Reporting

Income:	Brooklyn Supreme Court	\$22,128.00	
	Transcripts	2,717.00	
	Misc. - Insurance Companies	<u>3,445.00</u>	\$28,290.00

Expenses -	
A- Mart Expenses	1,121.00
Typing Fees Paid	2,540.00

Professional Development	
Tapeworm Cassettes, Verbatim	574.00
Travel to Schools (2,250 mi @ 17¢	383.00
Accounting	100.00
Interest - Educational Loan & Auto Maint	94.00
Dues, Memberships	170.00
Paper, supplies, Machine Repairs	727.00
Telephone - inside	240.00
Postage	472.00
Photocopies	684.00
Telephone - outside	382.00
Tolls, Parking	493.00
Travel (8,500 mi @ 17¢	1,445.00
Career Insurance	101.00
Newspapers, Magazines, Etc.	378.00
Cassettes, Tapes	286.00
Hospitality	544.00
Promotional Expenses	892.00
Studio Maint	600.00

Bank Charges	<u>36.00</u>	<u>12,062.00</u> ¹
net Income		<u>\$16,228.00"</u>

3. For 1979, petitioner reported business income of \$19,374.00. A Federal Schedule C attached to the return reported the following income and deductions:

"Schedule C - Income From Business or **Profession:** Court Reporting Svce

Income :

Brooklyn Supreme Court	\$23,900	
Transcripts	1,685	
Misc .	<u>9,776</u>	
		35,361

Expenses :

A- Mart Expenses	1,309	
Typing Fees Paid	2,589	
Professional Development:		
Tapeworm Cassettes Verbatin [sic]	625	
Travel to Schools (2,250 mi. @ 18¢	405	
Accounting	100	
Interest - Educational Loan & Auto Maint.	706	
Dues, Memberships	170	
Paper, Supplies, Machine Repairs	1,075	
Telephone - Inside	329	
Postage	473	
Photocopies	684	
Telephone - Outside	382	
Tolls , Parking	893	
Travel (8,500 @ 18¢	1,530	
Career Insurance	165	
Newspaper, Magazines, Etc.	378	
Cassettes, Tapes	586	
Hospitality	544	
Promotional Expenses	892	
Studio Maint	600	
Bank Charges	46	
Supplies	<u>1,506</u>	15,987

NET INCOME	<u>19,374"</u>
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4. Attached to each of petitioner's returns for the years at issue was a Wage and Tax Statement issued to petitioner by the State of New York showing \$22,128.28 for 1978 and \$33,675.62 for 1979 in "Wages, tips, other compensation". The legend "Included in Schedule C", with an arrow pointing to said figure, was stamped on each statement.

5. Petitioner filed an unincorporated business ~~tax~~ return for each of the years 1978 and 1979. For 1978, she reported a net profit of \$16,228.00 and a subtraction of \$22,128.00, which yielded a net loss and accordingly, no tax liability. For 1979, she reported a net profit of \$19,374.00 and a subtraction of \$33,676.00, which yielded a net loss and, accordingly, no tax liability. . The subtractions claimed of \$22,128.00 and \$33,676.00 for the years 1978 and 1979, respectively, were the amounts of income reported on the aforesaid wage and ~~tax~~ statements. A stamped legend "FICA Wages included in Schedule C", with an arrow pointing to the subtraction, appears on petitioner's 1978 and 1979 unincorporated business tax returns.

6. On petitioner's 1978 personal income tax return she claimed the standard deduction. On her 1979 return she claimed itemized deductions, however, no miscellaneous deductions were claimed for 1979. No adjustments to income were claimed for either year at issue,

7. Petitioner's tax returns were selected for examination along with those of approximately 100 other individuals on the basis that said returns had been prepared by a particular accountant. An investigation had disclosed that said accountant had consistently prepared returns on which an individual with wage or salary income shown on wage and tax statements had reported said income as business receipts on a Federal Schedule C. Department of Taxation and Finance Auditors were directed to review the returns

wage or salary income reported on wage and tax statements. Petitioner's claimed Schedule C deductions were disallowed on that basis.

8. On March 24, 1982, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1978, whereon her claimed business expense deductions reported on her Schedule C were disallowed in full based on the explanation that:

"Expenses claimed are not ordinary and necessary in the production of income as an employee."

9. Based on the aforesaid statement, a Notice of Deficiency was issued against the petitioner for the year 1978 on April 14, 1982, asserting additional New York State and City personal income taxes of \$1,742.45, plus interest of \$502.66, for a total due of \$2,245.11.

10. On January 17, 1983, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1979, whereon, as was the case in 1978, the Federal Schedule C deductions were disallowed on the basis that the expenses were not ordinary and necessary for the production of income as an employee. Petitioner's 1979 total New York Income was recomputed on said schedule as follows:

"Wages	\$33,675.62
Interest Income	1,210.00
Dividends	353.00
Capital Gain	7,643.00
Other Income	<u>11,461.00</u>
Total New York Income	\$54,342.00"

11. Based on the aforesaid statement, a Notice of Deficiency was issued against petitioner for the year 1979 on March 9, 1983, asserting additional New

York State and City personal income taxes of \$4,319.30, plus interest of \$1,410.90, for a total due of **\$5,730.20²**.

12. Petitioner contends:

(a) That the notices of deficiency were issued on an arbitrary and capricious basis just prior to the expiration of the period of limitation on assessment, thus depriving petitioner of the opportunity to present substantiation for the claimed deductions;

(b) that petitioner is part of a large group of taxpayers who were selected for special scrutiny because their returns had been prepared by the same tax preparer; and

(c) that where petitioner does not have cancelled checks or other receipts for certain expenses, the Department of Taxation and Finance should allow petitioner a reasonable estimate of such expenses.

13. Documentation submitted with respect to petitioner's income for the year 1978 shows that she earned more income (other than wages) than the amount reported on her Federal Schedule C. On petitioner's 1978 Schedule C she reported income, other than that reported on her Wage and Tax Statement, of \$6,162.00. Review of her records submitted shows that she earned income properly includable on her Schedule C of **\$6,996.96**. Petitioner submitted documentation with respect to 1978 business deductions which substantiates that she is properly entitled to Schedule C deductions of \$2,130.30. Accordingly, for 1978, her net business income is **\$4,866.66** (\$6,996.96 - \$2,130.30).

14. With respect to the year 1979, petitioner failed to submit documentation to show that her income for said year was properly reported. Although her wage income, according to her Wage and Tax Statement, was **\$33,675.62**, petitioner

2 The Notice of Deficiency contains typographical errors wherein the interest due was inadvertently typed into the "Total Penalty" box and the balancedue was inadvertently typed in the "Interest" box.

reported only \$23,900.00 on her Federal Schedule C as being derived from her employer. Documentation submitted with respect to petitioner's claimed Schedule C deductions show that she is properly entitled to claim such deductions to the extent of \$1,992.26.

15. The claimed Schedule C deductions which were not allowed in 1978 and 1979 were unsubstantiated with respect to amounts and/or character of such expenses.

CONCLUSIONS OF LAW

A. That the notices of deficiency were properly issued and were not arbitrary or capricious. The returns were patently erroneous and the Audit Division was justified in disallowing the Schedule C business income and expenses. The notices of deficiency for 1978 and 1979 were each preceded by a Statement of Audit Changes; thus, if a portion of the expenses claimed on Schedule C were actually employee business expenses properly deductible as adjustments on Federal Form 2106, or as itemized miscellaneous deductions, petitioner had an opportunity to file amended returns, but she did not do so.

B. That even if petitioner may have been entitled to deduct certain employee business expenses under sections 62(2) or 63(f) of the Internal Revenue Code if she had filed Form 2106, or had claimed such expenses as miscellaneous deductions, petitioner nevertheless failed to sustain her burden of proof under section 689(e) of the Tax Law and section T46-189.0(e) of the Administrative Code of the City of New York to show the character or, in many cases, the amount of the majority of her claimed business expenses.

C. That the fact that petitioner's returns were selected for examination because of certain practices of her accountant is irrelevant. Petitioner's liability depends solely on the facts adduced herein.

D. That a portion of petitioner's claimed income and deductions were derived from a business or trade carried on by her during the years at issue. Accordingly, such income and deductions are properly reportable on a Federal Schedule C as business income and deductions.

E. That petitioner's adjusted 1978 Total New York Income is \$26,494.94, computed as follows:

<u>Income Item</u>	<u>Amount</u>
Wage Income	\$22,128.28
Business Income (See Finding of Fact --13", <u>supra</u>)	4,866.66
Interest Income	1,061.00
Sale or exchange of capital assets	<u>(1,561.00)</u>
Adjusted 1978 Total New York Income	<u>\$26,494.94</u>

F. That petitioner's adjusted 1973 Total New York Income is \$52,350.36, computed as follows:


<u>Income Item</u>	<u>Amount</u>
Wages	\$33,675.62
Business Income (\$11,461.00 - \$1,992.26)	9,468.74
Interest Income	1,210.00
Dividend Income	353.00
Capital Gain	<u>7,643.00</u>
Adjusted 1979 Total New York Income	<u>\$52,350.36</u>

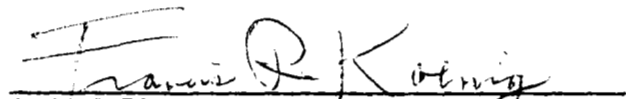
G. That the petition of Anna M. Raftery is granted to the extent provided in Conclusions of Law "D", "E" and "**F**", supra; that the Audit Division is directed to modify the notices of deficiency issued April 14, 1982 and March 9, 1983 accordingly; and that, except as so granted, said petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 18 1987


PRESIDENT


COMMISSIONER


COMMISSIONER